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6 November 1969

MEMORANDUM FOR THE RECORD

SUBJECT: S. 823 - Truth in Lending Act Amendment

1. S. 823, Truth in Lending Act amendment, was reported out by the Senate Banking and Currency Committee on 5 November 1969. On 6 November it was made the pending order of business before the Senate.

2. Purpose. The overall purpose of S. 823 is to assure that credit or other information assembled or evaluated by "consumer reporting agencies" for third parties is fair, impartial, and does not improperly intrude on the right to privacy.

3. Coverage. The proposed amendment applies to government agencies use of consumer reports to establish an individual's credit standing, character, reputation, personal characteristics, or mode of living.

4. Restrictions. Section 604 of the bill limits the use of "consumer reports" to specified purposes. One permissible use is for employment purposes. Otherwise, except for reports in response to a court order or a determination for a license or other benefit granted by a government agency where financial responsibility is a requirement of law, permissible uses are limited to business or credit transactions, unless the affected person otherwise authorizes in writing. However, and important to the Agency, a separate section (§ 608) authorizes limited disclosure (i.e., identifying information limited to name, address, former addresses, place of employment, or former places of employment) to governmental agencies "Notwithstanding the provisions of section 604."

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5. Investigative reports. Section 606 concerns "investigative consumer reports" (information gathered through personal interviews relating to character, personal characteristics, or mode of living). Investigative consumer reports may not be made without disclosure to the person to be investigated. However, such disclosure is not required where the report is "to be used for employment purposes for which the consumer has not specifically applied."

6. Compliance procedures. Section 607 imposes procedures requiring, among other things, that prospective users of consumer reports identify themselves to the reporting agency and certify both as to the purpose for which the information is sought and that it shall not or will not be used for any other purpose. A consumer report may not be issued if the reporting agency has reasonable grounds for believing that it will not be used for permissible purposes.

7. Disclosures to affected persons. Section 609 requires consumer reporting agencies upon request of the affected person to make certain disclosures to affected person. This includes the consumer reports it has furnished within the preceeding two years for employment purposes and within the preceeding six months for any other purpose. It appears that these two disclosure requirements would not apply, however, to investigative consumer reports for employment purposes for which the consumer has not specifically applied (see section 606(a)(2)). There is some question as to whether these disclosure requirements apply to reports to governmental agencies under section 608 (limited "identifying information").

8. Disputed information. Section 611 sets down a procedure for the consumer to correct reports of disputed accuracy. Notification of corrections made under the procedure by the consumer reporting agency must be made to any person specifically designated by the consumer. While the consumer reporting agency is also required to disclose to the consumer his right to make such a request there appears to be no requirement that the consumer reporting agency identify the users. Thus, if section 608 ("identifying information" disclosures to governmental agencies) is outside the disclosure requirement of section 609(3)(B) the correction of inaccurate information procedure:

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- a. Would not require user disclosure to the affected person of report used for employment purposes for which the consumer has not specifically applied (section 606(a)(2)); and
- b. It is possible that it would not require user disclosure in the case of governmental agencies under section 608.

9. Public record information. Section 613 requires that reporting agencies identify users to consumers who have received information of public record likely to have an adverse effect on the consumer's ability to obtain employment.

10. Requirement on users. Section 615 requires that whenever a user denies employment either wholly or partly because of information contained in a consumer report, the user shall supply, upon the consumer's written request, the reason for such adverse action and shall identify to the consumer the reporting agency involved. The user is further required to disclose to the consumer his right to make the request at the time the adverse action is communicated to him.

11. Liability. Sections 616 and 617 provides for actual damages, punitive damages, and attorney fees in the case of willful noncompliance and actual damages and attorneys fees when noncompliance is grossly negligent.

12. Jurisdiction of courts. Section 618 deals with court jurisdiction for establishing civil liability and requires that action be brought within two years from the occurrence of violation. Section 619 provides a \$5,000 fine or imprisonment for obtaining information under false pretenses.

13. Administrative enforcement. Section 620 places enforcement within the Federal Trade Commission except as otherwise specified in the section. In that connection, the Director of the Bureau of Federal Credit Unions has jurisdiction with respect to Federal credit unions.

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14. Effective dates. The provisions of S. 823 become effective 180 days following enactment. The requirements of section 609 respecting disclosure of the recipients of consumer reports do not apply to consumer reports furnished prior to the effective date of S. 823, except to the extent that the information is contained in the files of the consumer reporting agency on that date.



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